HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No.1350 OF 2006

Between:

Depot Manager,
A.P.S.R.T.C.,
Parvathipuram Depot,
Vizianagaram District.

... Appellant

AND

The Regional Secretary,
A.P.S.R.T.C., National Mazdoor Union,
Vizianagaram & another.

... Respondents

Counsel for the Appellant : Sri V.Padmanabha Rao
For Ms.B.G.Uma
Devi

Dated: 28th December, 2006

:JUDGMENT:

Per Sri C.V.Nagarjuna Reddy, J

This is an appeal by Depot Manager, Andhra Pradesh State Road Transport Corporation, Parvathipuram Depot, Vizianagaram District (appellant herein) for setting aside order dated 9.8.2006 passed by the learned Single Judge in Writ Petition No.16551 of 2006, whereby he declined to interfere with award dated 28.6.2004 passed by the Industrial Tribunal-cum-Labour Court, Vishakapatnam (for short, 'the Tribunal') in I.D.No.62 of 2002.

For deciding the appeal, we may briefly notice the facts.

The appellant initiated departmental proceedings against Sri T.Krishna Rao, a driver working in the Depot (hereinafter referred to as 'the driver') and a member of A.P.S.R.T.C., National Mazdoor Union, Vizianagaram, the first respondent in this appeal on the following charge:

> "For having driven the bus AP 9Z 7322 in a rash and negligent manner in an anticipation near Boyapalem on the route Vishakapatnam to Parvathipuram on 17.9.1997 at about 10.00 hrs., and dashed the auto No.AHO 3753 which was proceeding in front of your bus which resulted into titling of auto and injuries to the occupants of the auto causing loss to the corporation, which constitutes misconduct under Reg.28(ix.b) of APSRTC Employees' (Conduct) Regulations 1963."

It appears from the record that the driver could not file reply to the show cause notice and the appellant, without conducting any enquiry passed order dated 24.8.1999, whereby he imposed penalty of deferment of annual increment for a period of one year with cumulative effect besides ordering recovery of an amount of Rs.850/- towards costs of damage caused to the vehicle.

The dispute raised by the 1st respondent – Union was referred by the State Government to the Tribunal under Section 10(1)(c) of the Industrial

Disputes Act 1947 (for short, 'the Act').

As the punishment of withholding of increment with cumulative effect falls under the category of major penalties under the regulations of A.P.S.R.T.C., and as no enquiry was held before imposing the penalty on the driver, the Tribunal permitted both the parties to adduce evidence. Sri T. Krishna Rao examined himself as W.W 1 and on behalf of the management Assistant Manager (Traffic), Anakapally Depot was examined as M.W.1. Exs.M1 to M.14 were marked on behalf of the management. The Tribunal after examining the material on record and hearing the submissions of the respective parties passed award dated 28.6.2004 and set aside the punishment. The writ petition filed by the appellant was dismissed by the learned Single Judge, who opined that the award does not suffer from an error of law apparent on the face of the record.

Sri V. Padmanabha Rao, learned counsel for the appellant argued that the Tribunal committed a serious illegality by interfering with the order of punishment passed by the appellant and the learned Single Judge erred by refusing to set aside the award. He submitted that even though before issuing order of punishment, the appellant did not get an enquiry conducted into the charge of misconduct levelled against the driver, the Tribunal should have approved the same by relying on the statement of M.W 1 and documents marked as Exs. M-1 to M-14.

We have carefully considered the submissions of the learned counsel for the appellant. A perusal of the award of the Tribunal reveals that its decision to set aside the order passed by the appellant imposing the penalty on the driver is rested mainly on two grounds, namely, 1) that the conductor who was the eye witness to the accident was not examined and that his sworn statement recorded and marked as Ex.M5 does not disclose any fault on the part of the driver, and 2) that the evidence of M.W.1 discloses that the report of Motor Vehicles Inspector on the accident was not taken into consideration in the domestic enquiry. The Tribunal held that from the material on record the management failed to show that that the accident

occurred on account of the negligence of the driver. The Tribunal also took into consideration the fact that the criminal case filed against the driver ended in acquittal in the year 2001.

The law in the scope of judicial review of the action taken by the employer to punish an employee is well settled. The court/tribunal can interfere with the action taken by the employer if the order of punishment is not preceded by an enquiry, held in consonance with the rules of natural justice or the enquiry held by the employer is vitiated due to patent violation of the basics of natural justice and such violation has prejudiced the cause of the employee or the finding recorded in the domestic enquiry is perverse. The court/tribunal can also tinker with the punishment imposed by the employer if it is found to be shockingly disproportionate or totally arbitrary.

It is also well settled that in exercise of power under Article 226 of the Constitution, the High Court cannot interfere with an award made by the labour court or tribunal unless it is shown to be vitiated by an error of jurisdiction or an error of law apparent on the face of the record.

The High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have

been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.
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> iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn

from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2]

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3] their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd.**[4] the Supreme Court considered the question whether in exercise of pow under Article 227, the High Court can interfere with the discretion exercised the Tribunal under Section 11-A of the Act and observed :

> "Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the

> Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[5] the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[6]**,** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory

jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or

> revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

If the award of the Tribunal is examined in the light of the above noted propositions, we do not find any reason to disagree with the learned Single Judge that the same is not vitiated by any jurisdictional infirmity or error of law apparent on the face of the record. At the cost of repetition, we deem it necessary to observe that the Tribunal, after analyzing the evidence produced before it came to the conclusion that the charge levelled against the driver is not proved. This finding is based on an analysis of the evidence and the material produced by the parties. Therefore, the learned Single Judge rightly declined to interfere with the award and we do not see any reason to take a different view.

In the result, the appeal is dismissed.

As a sequel to the dismissal of the Writ Appeal, W.A.M.P.No.2862 of 2006 is also dismissed.

C.V.NAGARJUNA REDDY, J

28th December, 2006

G.S.SINGHVI, CJ

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[1] AIR 1964 SC 477

[2] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[3] AIR 1970 SC 61

[4] (1984) 3 Supreme Court Cases 5

[5] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[6] AIR 2003 SC 3044